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JUN 7 1983

ALEXANDER L. STEVAS.  
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

\_\_\_\_\_  
WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

\_\_\_\_\_  
ON APPEAL FROM  
THE SUPREME COURT OF GEORGIA

\_\_\_\_\_  
JURISDICTIONAL STATEMENT

\_\_\_\_\_  
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Attorneys for:

WILLIAM MARK WATKINS

June 6, 1983

---

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### QUESTIONS PRESENTED

- (i) In light of the holding in O'Connor v. Donaldson, 422 US 563, 576 (1975) limiting the power of a State to involuntarily commit a mentally ill person, is the Georgia statute overbroad and deficient in that it authorizes the involuntary committment of "a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends"?
- (ii) Did the Supreme Court of Georgia err when it refused to adjudicate the merits of Appellant's constitutional attack upon Georgia's involuntary committment statute?

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1982

\_\_\_\_\_  
Number \_\_\_\_\_

\_\_\_\_\_  
WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

\_\_\_\_\_  
ON APPEAL FROM  
THE SUPREME COURT OF GEORGIA

\_\_\_\_\_  
JURISDICTIONAL STATEMENT

\_\_\_\_\_  
Dr. William Mark Watkins, the Appellant,  
appeals from the Final Judgment of the Supreme  
Court of Georgia, entered March 9, 1983, in  
which the Supreme Court affirmed, without  
opinion, the Order of the Superior Court of  
Laurens County, Georgia, entered September 24,  
1982, which granted Appellee's Motion for

Summary Judgment, and held that Appellee was immune from a suit for money damages by virtue of his alleged good faith compliance with State immunity statutes [Ga. Code Ann. §88-404.2 (O.C.G.A. 37-7-41); Ga. Code Ann. §88-502.2 (O.C.G.A. 37-3-41)], regarding Appellant's involuntary commitment to a State mental health institution as an allegedly mentally ill person, and declined to entertain Appellant's amended complaint for declaratory relief which had requested the Court to declare the immunity statutes unconstitutional.

#### OPINIONS BELOW

Pursuant to its Rule 59, the Supreme Court of Georgia affirmed the order of the trial court without opinion. The decision of the Supreme Court of Georgia is reported at \_\_\_\_ Ga. Reports \_\_\_\_, 301 S.E.2d. 287 (1983), and reprinted here at p. 4a, *infra*.

The order of the trial court is not reported. It is reprinted here at p. 1a, *infra*.

## **JURISDICTION**

On March 9, 1983, the Supreme Court of Georgia affirmed the judgment of the trial court which had granted Appellee immunity from Appellant's suit for money damages and rejected Appellant's constitutional attack on Georgia's immunity statute. Motion for Rehearing was denied on March 30, 1983. See p. 5a, *infra*.

Notice of Appeal to this Court was duly filed in the Supreme Court of Georgia on June 6, 1983. See page 6 a, *infra*.

Appeal was docketed in this Court within ninety (90) days from the date of the judgment in the court below.

Jurisdiction here is invoked under 28 USC §1257(2).

### **CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES**

United States Constitution, Amendment XIV,  
Section 1:



All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

---

Constitution of Georgia, 1976, Article I, Section I, Paragraph I, (now Constitution of Georgia of 1982, Article I, Section I, Paragraph I):

Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.

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Ga. Laws 1978, p. 1789 at 1809; Ga. Code Ann. §88-504.2(a) (now Official Code of Georgia Annotated 37-3-41) "Admission to an Emergency Receiving Facility":

Any physician within this State may execute a certificate stating

that he has personally examined a person within the preceeding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment. A physicians' certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

---

Ga. Laws 1978, p. 1789 at 1793 ; Ga. Code  
Ann. §88-501(v) (now O.C.G.A. 37-3-1(12)):

'Mentally ill person requiring involuntary treatment' means a person who is mentally ill and (A) who presents a substantial risk of imminent harm to himself or others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons, or (B) who is unable to care for his own physical health and safety as to create an imminently life-endangering crisis.

Ga. Laws 1978, p. 1856 at 1877; Ga. Code  
Ann. §88-404.2(a) (now O.C.G.A. 37-7-41):

Admission to an emergency receiving facility. Any physician within this State may execute a certificate stating that he has personally examined a person within the preceeding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician's certificate shall expire seven days after is it executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

---

Ga. Laws 1978, p. 1856 at 1862; Ga. Code  
Ann. §88-401(y) (now O.C.G.A. 37-7-1(3)):

'Alcoholic, drug dependent individual, or drug abuser requiring involuntary treatment' means a person who is an alcoholic, a drug dependent individual, or a drug abuser and (i) who presents a substantial risk of imminent harm to himself or others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons, or (ii) who is incapacitated by alcohol or drugs on a recurring basis.

Ga. Laws 1978, p. 1856 at 1862; Ga. Code  
Ann. §88-401(z) (now O.C.G.A. 37-7-1(13)):

'Incapacitated by alcohol or drugs' means that a person, as a result of the use of alcohol or drugs exhibits life-threatening levels of intoxication, withdrawal, or imminent danger thereof, or acute medical problems; or is under the influence of alcohol or drugs to the extent that he is incapable of caring for himself or protecting himself due to the continued consumption thereof.

---

Ga. Laws 1978, p. 1789 at 1806; Ga. Code  
Ann. §88-502.23 (now O.C.G.A. 37-3-4):

Liability for Violations. Any physician, peace officer, attorney, health official or hospital official, agent or employee, whether employed by private hospital or at facilities operated by the State, a political subdivision of the State, or by a hospital authority created pursuant to the hospital authority's law of Georgia, Chapter 88-18 of the Georgia Code, who acts in good faith in compliance with the admission and discharge provisions of this Chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility.

Ga. Laws 1978, p. 1856 at 1874; Ga. Code  
Ann. §88-402.23 (now O.C.G.A. 37-7-5):

Liability for Violations. Any physician, peace officer, attorney, health official or hospital official, agent or employee, whether employed by private hospital or at facilities operated by the State, a political subdivision of the State, or by a hospital authority created pursuant to the hospital authority's law of Georgia, Chapter 88-18 of the Georgia Code, who acts in good faith in compliance with the admission and discharge provisions of this Chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility.

---

Supreme Court of Georgia, Rule 59:

Affirmance without opinion. Affirmance without opinion may be rendered when the court determines one or more of the following circumstances exists and is dispositive of the appeal:

- (1) The evidence supports the judgments;
- (2) No error of law appears and an opinion would have no precedential value;
- (3) The judgment of the court below adequately explains the decision.

## RAISING THE FEDERAL QUESTION

At the earliest stage of the proceedings in the trial court following Appellee's invocation of the statutory immunity defense, Appellant amended his complaint to attack the constitutionality of the commitment statutes involved. Specifically, Appellant prayed that Ga. Code Ann. §88-504.2 and §88-404.2 be declared unconstitutional for the reason that they abridged his right of liberty guaranteed by the Fourteenth Amendment and similar provisions of the Constitution of the State of Georgia.

Following this amendment, the trial court consolidated for hearing the question of Appellee's statutory immunity and Appellant's demand for declaratory relief.

On September 24, 1982, the trial court entered an order in which it refused to consider the constitutional challenge and in which it found as a fact that Appellee had

exhibited good faith in complying with the statutory requirements for involuntary commitment.

On appeal before the Supreme Court of Georgia, Appellant reiterated his constitutional claims, and urged the Supreme Court to reverse the trial court and to require it to consider Appellant's constitutional claims; however, the Supreme Court refused to do so and affirmed the trial court without opinion, pursuant to its Rule 59. Thus, the Supreme Court of Georgia considered and rejected Appellant's federal constitutional claim. See, e.g., Lawrence v. State Tax Commission, 286 US 276, 281-283 (1931).

#### STATEMENT OF THE CASE

The Appellant is a physician licensed to practice medicine in the State of Georgia, who, until March 27, 1979, was actively engaged in the private practice of medicine in Dublin, Georgia. On that date, he was



staying in a motel in Dublin with a long-time friend, one Harry Green. Acting on the request of members of Appellant's family, Appellee, who was also a physician in private practice in Dublin, visited Appellant's room at the motel. He briefly conversed with Appellant through a closed door, and as a result of this "examination", executed a form known as "EMERGENCY ADMISSION - PHYSICIAN'S CERTIFICATE AND REPORT OF PEACE OFFICER". A copy of the certificate in issue is reproduced in the Appendix at p. 8 a. This form is promulgated under the authority of Ga. Code Ann. §88-504.2 and §88-404.2, and is the document by which one physician authorizes the involuntary commitment of a person suspected of being mentally ill or of being a drug abuser. On this certificate, Appellee stated that he had personally examined Appellant and as a result had concluded that Appellant was a drug



abuser requiring involuntary committment. Acting under authority of Appellee's certificate, Appellant was immediately arrested by deputies of the county sheriff's department, and taken in a patrol car to the Georgia Regional Hospital at Augusta.

In his subsequent lawsuit, Appellant contended that Appellee's actions were tortious and amounted to malpractice. Appellee defended on the ground of good faith compliance with Ga. Code Ann. §88-504.2 and §88-404.2.

Appellee moved for summary judgment on the grounds of statutory immunity. The trial court granted the motion and never reached the merits of Appellant's constitutional attack.

The Supreme Court of Georgia, in affirming the trial court also failed to reach the merits of Appellant's constitutional attack on these statutes. Since this decision of the Supreme

Court has the effect of upholding the validity of the State laws involved, this appeal has been taken to this Court.

**THE QUESTIONS INVOLVED ARE SUBSTANTIAL**

This appeal requires this Court to examine the Georgia statutory scheme for involuntary committment in light of O'Connor v. Donaldson, 422 US 563, 576 (1975). Specifically, this Court held:

A state cannot constitutionally confine, without more, a non-dangerous individual who is capable of surviving safely in freedom by himself, or with the help of willing and responsible family members or friends.

Notwithstanding this clear pronouncement, the Georgia General Assembly in 1978, enacted a statutory scheme which ignores this limitation on State power. In view of the incident from which this litigation arose, it is glaringly apparent that Ga. Code Ann. §88-404.2 and §88-504.2 authorize the involuntary committment of non-dangerous persons

capable of surviving safely in freedom with the help of willing and responsible family members or friends.

Georgia's scheme for involuntary commitment of persons alleged to be abusers of alcohol and/or drugs is found in O.C.G.A. §37-7-41 (Ga. Code Ann. §88-404.2(a)), which must be read together with two definitional sections in the same chapter: O.C.G.A. 37-7-1(3) (Ga. Code Ann. §88-401(y)), and O.C.G.A. 37-7-1(13) (Ga. Code Ann. §88-401(z)). Georgia's scheme for the involuntary commitment for persons alleged to be mentally ill is found at O.C.G.A. 37-3-41 (Ga. Code Ann. §88-504.2(a)), which also must be read together with one definitional section: O.C.G.A. 37-3-1(12) (Ga. Code Ann. §88-501(v)). From the testimony of the Appellee, it is clear that although he executed a "Physician's Certificate" in reference to the Plaintiff under the authority of O.C.G.A. Chapter 37-7

(then Ga. Code Ann. 88-4), the Code Chapter relating to drug abuse, he was attempting to commit and confine the Appellant as an allegedly "mentally ill person". For this reason Appellant focuses his analysis exclusively upon the statutes relating to the committment of mentally ill persons.

O.C.G.A. 37-3-1(12) deals in its first subdivision with dangerous individuals, and its second subdivision with non-dangerous individuals. The first subdivision, O.C.G.A. 37-3-1(12)(A), is not applicable to the facts of the case. By the testimony of the Appellee himself, and the testimony of Harry Green, appellant's friend staying with him when he was taken into custody, Appellant posed no imminent threat of harm or danger to himself or others.

The facts of this case present a commitment under O.C.G.A. 37-3-41, and 37-3-1(12)(B), the second subdivision of the definitional

section above-quoted.

O.C.G.A. 37-3-1(12)(B) pertains to the involuntary commitment of non-dangerous individuals. When this subdivision "B" is read in light of O'Connor, supra, three possibilities present themselves. First, there are those individuals capable of surviving safely in freedom by themselves. Second, there are those individuals incapable of surviving safely in freedom by themselves, but capable of surviving safely with the help of family or friends. Thirdly, there are those individuals incapable of surviving safely in freedom. The third category includes persons incapable of surviving safely in freedom by themselves and those persons incapable of surviving safely in freedom even with the help of family or friends.

Persons in the first category cannot be committed under the O'Connor standard, supra, or under the terms of O.C.G.A. 37-3-1(12).

Persons in the third category can be involuntarily committed under both the O'Connor standard and Georgia statute.

Persons in the second category, however, cannot be committed under the O'Connor v. Donaldson standard, but can be committed under 37-3-1(12). It is this variance from the O'Connor standard which has prompted this appeal. Appellant, at the time of his arrest at the motel, was in the custody of a close friend and obviously surviving safely in freedom. In short, Appellant was a "category two" individual. Thus O.C.G.A. 37-3-41, which gives O.C.G.A. 37-3-1(12)(B) operative effect, authorized the unconstitutional commitment and detention of the Plaintiff. The Georgia statute is impermissably overbroad in that it allows the State of Georgia to involuntarily commit a non-dangerous individual who is surviving safely in freedom with the help of a willing and responsible friend.

The Georgia statute simply fails to recognize the constitutional limitations placed on State commitment power by this Court in O'Connor, 422 US 563, 576. Appellant continues to be hurt by the refusal of the trial court and the Supreme Court of Georgia to recognize the prevailing constitutional standard in this area, namely O'Connor, and its application to the facts herein.

This would be the first case in which these portions of Georgia statutes, as enacted in 1978, were reviewed for the purposes of constitutional overbreadth analysis, in light of O'Connor v. Donaldson, supra. By simply ignoring Appellant's constitutional attack, the trial court and the Supreme Court of Georgia have denied Appellant the benefit of the holding of O'Connor, and have effectively prevented him from vindicating the denial of the right of liberty, which the Constitution guarantees; and which could not be abridged



by the Georgia Legislature in its 1978 enactment.

Unless this Court assumes probable jurisdiction of this case, Appellant will continue to be denied the opportunity to vindicate the State's abridgment of the rights conferred by O'Connor.

#### CONCLUSION

For these reasons, the Court should note probable jurisdiction of this appeal.

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Respectfully submitted,

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ATTORNEYS FOR APPELLANT,  
WILLIAM MARK WATKINS

June 7, 1983



APPENDIX

IN THE SUPERIOR COURT OF LAURENS COUNTY

STATE OF GEORGIA

WILLIAM MARK	:	
WATKINS, M.D.,	:	
	:	
PLAINTIFF	:	CIVIL ACTION NO.
	:	81-278
vs.	:	
	:	
W.P. ROCHE, JR.,	:	DEFENDANT'S MOTION
M.D.,	:	FOR SUMMARY JUDGMENT
	:	
DEFENDANT	:	

ORDER OF COURT

In considering Plaintiff's Amended Complaint of June 3, 1982, the Court has been asked to provide declaratory relief on the issue of the constitutionality of Ga. Code Ann. Sections 88-402.23 and 88-404.2. This the Court declines to do. A declaratory judgment would be inappropriate at this juncture of the case for the reasons that not only have all of Plaintiff's rights fully accrued, thereby relieving him of any danger of proceeding further, but Defendant's acts

are also complete so far as Plaintiff is concerned.

Therefore, it is the Order of this Court that Plaintiff's prayers for declaratory relief are denied.

After further consideration of all the pleadings, answers to interrogatories, depositions, and affidavits, together with briefs submitted by the parties, the Court finds as a matter of fact that Defendant exhibited good faith in complying with the statutory requisites relative to the involuntary committment complained of.

Thus, it is further ordered that Defendant's Motion for Summary Judgment in the above-styled case be granted.

SO ORDERED, this 24th day of September, 1982.

(s) Dubignon Douglas  
Judge, Laurens Superior  
Court, Dublin Judicial  
Circuit

DISTRIBUTION

Original - Clerk  
Copy - Kenneth R. Fielder  
Copy - Stephen E. Shepard  
Copy - Wilson R. Smith

Filed in office this  
24th day of Sept., 1982  
(s) Carla B. Troup  
Deputy Clerk

In the Supreme Court of Georgia

Decided: March 9, 1983

39258.        WATKINS V. ROCHE

Judgment affirmed without opinion  
pursuant to Rule 59.

All the Justices concur.

Clerk's Office, Supreme Court of Georgia

ATLANTA, MARCH 30, 1983

The motion for a rehearing was denied  
today:

Case No. 39258. Watkins v. Roche

Yours very truly,

MRS. JOLINE B. WILLIAMS,  
CLERK

IN THE SUPREME COURT OF  
THE STATE OF GEORGIA  
CASE NUMBER 39258

WILLIAM MARK	§
WATKINS,	§
	§
Appellant,	§
	§
vs.	§
	§
W. P. ROCHE, JR.,	§
	§
Appellee.	§

NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES

---

Notice is hereby given that William Mark Watkins, Appellant above-named, hereby appeals to the Supreme Court of the United States from the final Judgment of the Supreme Court of the State of Georgia, affirming the Order of the Superior Court of Laurens County, granting Summary Judgment to Defendant-Appellee, W. P. Roche, Jr., entered in this action on March 9, 1983; and denial of Appellant's Motion for Rehearing having been entered on March 30, 1983.

This appeal is taken pursuant to 28 USC §1257(2).

(s)

KENNETH R. FIELDER

Post Office Box 766  
Cochran, Georgia 31014  
(912) 934-4562

(s)

STEPHEN E. SHEPARD

418 Greene Street  
Augusta, Georgia 30901  
(404) 724-6597

ATTORNEYS FOR APPELLANT

Filed June 6, 1983, by  
Certified Mail, per  
Rule 4, Supreme Court of  
Georgia.

By Authority of Section 88-404.2 and 88-404.3,  
Georgia Health Code, Georgia Laws 1978, pp.  
1856-1894.

State of Georgia, County of Laurens Georgia  
Emergency Receiving Facility known as Georgia  
Regional Hospital of Augusta.

To the peace officer:

This is to certify that I have personally  
examined Wm. Mark Watkins 3/27 1979 at 10<sup>15</sup> AM.,  
which was within the preceding 48 hours of the  
date of the signing of this certificate. In  
my opinion this person appears to be an alco-  
holic, a drug dependent individual or a drug  
abuser requiring involuntary treatment in that  
he appears to be an alcoholic, a drug dependent  
individual or a drug abuser AND (a) appears to  
present a substantial risk of imminent harm  
to himself or others as manifested by either  
recent overt acts or recent expressed threats  
of violence which present a probability of  
physical injury to himself or to other persons



or (b) appears to be incapacitated by alcohol or drugs on a recurring basis. My opinion is based on the following observations:

Flight of ideas, aparent paranoia (will talk to me via "tape"); admission that he is emotionally unstable.

Upon receipt of this certificate, the Peace Officer shall make diligent efforts to take the above-named person into custody as soon as possible, but within 72 hour after receiving this certificate. Thereafter, the Peace Officer shall transport the above-named person to the emergency receiving facility serving the county where such person is found. This certificate expires 7 days after it is executed. This certificate and the Report of Peace Officer are to be delivered by the Peace Officer to the emergency receiving facility and are to be made part of the above-named person's clinical record.

3/27 1979 time 10<sup>30</sup> A.m. (s) W. P. ROCHE, JR.M.D.

W. P. Roche, Jr. M.D.  
Printed Name of M.D.

912-272-1366  
Telephone Number

GEORGIA DEPARTMENT OF  
HUMAN RESOURCES

PATIENT IDENTIFICATION

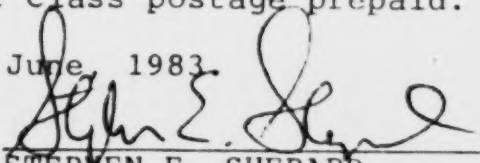
EMERGENCY ADMISSION  
PHYSICIAN'S CERTIFICATE  
AND REPORT OF PEACE OF-  
FICER

## CERTIFICATE OF SERVICE

I certify that I have served copies of the within and foregoing Jurisdictional Statement on Wilson R. Smith, Attorney for W. P. Roche, Jr., Appellee, at 205 East Third Street, Vidalia, Georgia, 30474, by depositing the same in the United States Mail, properly addressed, with First Class postage prepaid.

I further certify, pursuant to Rule 28(c), that 28 USC 12403(b) may be applicable, and I have served copies of the within and foregoing Jurisdictional Statement on the Honorable Michael J. Bowers, Attorney General, State of Georgia, Room 132, State Judicial Building, Atlanta, Georgia, 30334, by depositing the same in the United States Mail, properly addressed, with First Class postage prepaid.

This 7th day of June, 1983

  
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Counsel of Record for  
William Mark Watkins,  
Appellant.

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